

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE COMMISSIONER OF HUMAN SERVICES

In the Matter of the Revocation of the  
Family Child Care License of  
Lori L. Reller

**FINDINGS OF FACT,  
CONCLUSIONS, AND  
RECOMMENDATION**

This matter came on for Hearing before Administrative Law Judge Steve M. Mihalchick on December 11, 2002, at the Roseau County Courthouse, 606 Fifth Avenue SW, Roseau, MN. The hearing record closed on the date of the hearing.

Michael P. Grover, Attorney at Law, 115 Roberts Avenue NE, P.O. Box 430, Warroad, MN 56763, assisting the Roseau County Attorney, appeared for the Department of Human Services and Roseau County Social Services.

Lori Reller, 45892 County Road 4, Roseau, MN 56751, appeared on her own behalf.

**NOTICE**

This Report is a recommendation, not a final decision. The Commissioner of Human Services will make a final decision after reviewing the administrative record, and may adopt, reject or modify these Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by the Report to file exceptions and present argument to the Commissioner. Parties should contact Kevin Goodno, Commissioner, Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155 to ascertain the procedure for filing exceptions or presenting argument. If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2. The record closes upon the filing of comments, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

**STATEMENT OF ISSUES**

Did Licensee's husband sexually abuse Licensee's oldest daughter? The Administrative Law Judge finds that he did.

Should the disqualification of Licensee's husband due to findings that he sexually abused Licensee's oldest daughter, and the revocation of Licensee's family child care license based upon that disqualification, be upheld? The Administrative Law Judge concludes that they should.

Based upon the proceedings herein, the Administrative Law Judge makes the following:

### **FINDINGS OF FACT**

1. Licensee is a resident of Roseau County and has been licensed since October, 1991, as a family child care provider. She provides child care at her residence in Roseau.<sup>[1]</sup> Roseau County Social Services does not dispute that Licensee provides quality daycare services, but is instead concerned with her husband's continued residence in the home.

2. Licensee's household now consists of her husband, whom she married August 3, 1995, and a daughter and son from a prior marriage.<sup>[2]</sup> In November, 2000, Licensee's oldest daughter, then 15, had moved out of Licensee's home and gone to live with her father, Licensee's ex-husband.<sup>[3]</sup> She later moved to her grandparents home.<sup>[4]</sup>

3. Licensee's husband had been sexually abusing Licensee's oldest daughter for at least four years prior to November 2000.

4. In July 2001, Licensee's oldest daughter confided to her father's girlfriend that Licensee's husband had been sexually abusing her for a number of years before she moved out. The girlfriend reported the abuse.

5. On July 16, 2001, Sheriff's Investigator Steven Roseen and Roseau County Child Protection Worker Rachal Erickson interviewed Licensee's oldest daughter regarding her allegations.<sup>[5]</sup> Although Licensee's oldest daughter initially had difficulty remembering details, she was able to recount, during the interview and in a subsequent letter to Roseen, several instances of abuse beginning when she was approximately nine years old (1994 to 1995) and continuing until she left Licensee's house in November 2000.<sup>[6]</sup> The conduct included fondling, oral sex, and intercourse, and usually occurred when Licensee was out of the home or at night when Licensee's husband would enter the daughter's bedroom. The first incident of fondling occurred when she was in fourth grade, followed by at least eight other incidents of some form of sexual abuse.<sup>[7]</sup> Licensee's oldest daughter began taking birth control pills at Licensee's husband's suggestion because he never used a condom when he abused her. The daughter told Roseen and Erickson that she had to come forward with the allegations to protect her nine-year-old sister from abuse by Licensee's husband.<sup>[8]</sup>

6. Roseen and Erickson also interviewed Licensee's husband on July 16, 2001. He denied any wrongdoing. He did corroborate the two instances when he and Licensee's oldest daughter were alone at the Roseau County Fair and another fair, but denied that any inappropriate touching or intercourse occurred there. Licensee was interviewed that same day and expressed disbelief of her daughter's allegations against her husband.

7. On August 1, 2001, Licensee's husband was charged with two counts of criminal sexual conduct in the first degree.<sup>[9]</sup> The Complaint alleged that he had been

engaging in sexual relations with Licensee's oldest daughter through fondling and full intercourse for the past four or five years. The Complaint described several specific instances of sexual conduct.

8. Erickson determined that maltreatment had occurred. She based that determination upon the incidents recounted by Licensee's oldest daughter in the interview and the letter, and upon other interviews she conducted.<sup>[10]</sup> Licensee's ex-husband and his girlfriend, and Licensee's parents, believed Licensee's daughter's statements about the abuse. Certain statements and occurrences involving their granddaughter and Licensee's husband began to "make sense" to them after Licensee's oldest daughter alleged the sexual abuse. At times the grandmother would care for Licensee's younger children while Licensee ran errands, and the oldest daughter and Licensee's husband could have been alone during those times. Shortly after Licensee's daughter had moved from home, Licensee's husband had called and told them that she might start making up stories. Also, Licensee's oldest daughter had confided to a girlfriend approximately one month earlier that Licensee's husband had raped her. When asked by Roseen and Erickson if Licensee's oldest daughter had made up stories for before, she responded that she had done so for attention, but did not believe that this story was made up because it "would only make her life worse." The daughter's school social worker described the daughter as having processing problems that made recalling details an on-going problem for Licensee's oldest daughter. She reported that the daughter had expressed fear when faced with returning to Licensee's residence even for a visit, and only recently had been able to explain that it was because of the sexual abuse. She also reported several phone calls from Licensee and her husband telling her how much an attorney was going to cost them and giving her the impression that Licensee and her husband were trying to get Licensee's daughter to retract the allegations. Erickson's found it significant that Licensee's oldest daughter had maintained her allegations despite the resulting difficulties between her and her mother and siblings, the fact that no one identified any other stories told by the daughter except when she thought she was pregnant, that Licensee's husband corroborated that he had been alone with the oldest daughter at the Roseau County Fair, and that the oldest daughter made the disclosure months after leaving Licensee's residence and did not use the allegations as a means to leave.<sup>[11]</sup>

9. Sometime after Licensee's oldest daughter made the allegations of sexual abuse, she began seeing a licensed psychologist specializing in the area of child sexual abuse. After counseling the daughter for a few months and despite his initial doubts, the psychologist concluded that there likely had been inappropriate activity between Licensee's oldest daughter and husband.<sup>[12]</sup>

10. Karen Olson, the Roseau County Social Worker in charge of child care and foster care licensing, received Erickson's report. In separate letters dated October 29, 2001, Olson notified Licensee and her husband of the determination that maltreatment had occurred.<sup>[13]</sup>

11. On October 31, 2001, Licensee's husband was administered a polygraph examination by a certified forensic polygraphist, consisting of three questions relating to

whether he sexually abused Licensee's oldest daughter.<sup>[14]</sup> In the opinion of the polygraphist, Licensee's husband answered truthfully when he denied ever having sexual contact or sexual intercourse with Licensee's oldest daughter. In addition, Licensee's husband's criminal defense counsel hired a private investigator who interviewed family, friends and neighbors of Licensee's family, former friends of Licensee's oldest daughter, a former employer of the oldest daughter, as well as some of Licensee's daycare families.<sup>[15]</sup> Many of these statements characterized Licensee's oldest daughter as a promiscuous "wild child" who objected to following rules and who often lied. Witnesses at the hearing made similar statements. All of Licensee's daycare parents support her, believe her husband's denials, and want to continue using Licensee's daycare.

12. In a letter dated November 5, 2001, Licensee requested reconsideration of the maltreatment determination.<sup>[16]</sup> On November 16, 2001, Roseau County Social Services denied the request for reconsideration.<sup>[17]</sup>

13. On February 13, 2002, the Department of Human Services notified Licensee's husband, as an individual requiring a background study under Licensee's license, that he was disqualified from any position having direct contact with, or access to, persons served by programs licensed by the Department. He requested reconsideration. In a letter dated April 30, 2002, the Department notified Licensee's husband that the disqualification would not be set aside and that a variance would not be granted.<sup>[18]</sup>

14. In letters dated April 30, 2002, Roseau County Social Services informed each of Licensee's daycare families that it was recommending that the Department's take negative licensing action against Licensee.<sup>[19]</sup>

15. By letter of May 3, 2002, the Department notified Licensee that her license would be revoked based upon her husband's disqualification.<sup>[20]</sup> The letter further informed Licensee of her right to submit a written appeal of the revocation and disqualification within ten days. Licensee submitted a timely appeal.

16. The County served the Notice of and Order for Hearing on July 31, 2002, setting the hearing to take place on September 6, 2002. The hearing was later rescheduled to November 14, 2002, and then to December 11, 2002.

17. Shortly before the scheduled criminal trial, Licensee's oldest daughter decided that she did not wish to testify to the abuse. On August 16, 2002, Licensee's husband and the County Attorney entered into an Agreement for Pre-Trial Diversion, which was approved and ordered by the District Court.<sup>[21]</sup> The Agreement and Order was contingent on conditions including, but not limited to, that Licensee's husband have no contact with Licensee's oldest daughter, and that he have no contact with females under the age of 16 without another adult present, with the exception of the children in his immediate family.

## CONCLUSIONS OF LAW

1. The Administrative Law Judge and the Minnesota Department of Human Services have authority to consider and rule on the issues in this contested case hearing pursuant to Minn. Stat. §§ 14.50 and 245A.08.

2. The Department gave proper notice of the hearing, and all relevant substantive and procedural requirements of law or rule have been fulfilled.

3. Pursuant to Minn. Stat. § 245A.08, subd. 2a, this is a consolidated contested case hearing regarding revocation of a child care license and a disqualification for maltreatment that was not set aside. Licensee appealed both the decision not to set aside the disqualification of her husband and the revocation of her license. Therefore, the Administrative Law Judge must review both the disqualification and the revocation.

4. Maltreatment in the form of sexual abuse means “the subjection of a child by a person responsible for the child’s care . . . to any act which constitutes a violation of section 609.342 (criminal sexual conduct in the first degree).”<sup>[22]</sup> “‘Person responsible for the child’s care’ means (1) an individual functioning within the family unit and having responsibilities for the care of the child such as a parent, guardian, or other person having similar care responsibilities.”<sup>[23]</sup>

5. A child care provider’s license shall be revoked, not renewed, or suspended if the provider, or any other person living in the day care residence, has a disqualification under Minn. Stat. § 245A.04, subd. 3d.<sup>[24]</sup>

6. Minn. Stat. § 245A.04, subd. 3d(4) states that an individual will be disqualified from any position allowing direct contact with persons receiving services if a determination by the preponderance of the evidence shows that maltreatment occurred and that the individual was responsible for that maltreatment.

7. The Commissioner may set aside a license disqualification if the Commissioner finds that the individual does not pose a risk of harm to any person served by the applicant. In determining that an individual does not pose a risk of harm, the commissioner shall consider the nature, severity, and consequences of the event or events leading to the disqualification, whether there is more than one disqualifying event, the age and vulnerability of the victim at the time of the event, the harm suffered by the victim, the similarity between the victim and persons served by the program, the time elapsed without a repeat of the same or similar event, documentation of successful completion by the individual of training and rehabilitation, and any other relevant information. In reviewing a disqualification, the Commissioner shall give “preeminent weight” to the safety of each person to be served by the applicant.<sup>[25]</sup>

8. Minn. Stat. § 245A.08, subd. 3(a) provides:

Subd. 3. **Burden of proof.** (a) At a hearing regarding a licensing sanction under section 245A.07, including

consolidated hearings under subdivision 2a, the commissioner may demonstrate reasonable cause for action taken by submitting statements, reports, or affidavits to substantiate the allegations that the license holder failed to comply fully with applicable law or rule. If the commissioner demonstrates that reasonable cause existed, the burden of proof shifts to the license holder to demonstrate by a preponderance of the evidence that the license holder was in full compliance with those laws or rules that the commissioner alleges the license holder violated, at the time that the commissioner alleges the violations of law or rules occurred.

9. Through the transcribed verbal interview and the written statement of Licensee's oldest daughter, the testimony and report of the Sheriff's Investigator, and the testimony and report of the Child Protection Worker, the Department presented evidence sufficient to substantiate the allegations that Licensee's husband sexually abused Licensee's oldest daughter prior to November, 2000, and demonstrated reasonable cause for the maltreatment determination, the disqualification of Licensee's husband, and the decision not to set aside the disqualification.

10. Licensee did not demonstrate by a preponderance of the evidence that the sexual abuse did not occur. In fact, the preponderance of the evidence is that the sexual abuse did occur as alleged. Therefore, disqualification was correct.

11. Licensee's husband lives in the day care residence and intends to remain there. Therefore, under Minn. R. 9502.0335, Licensee's license must be revoked or suspended. Because the disqualification was for sexual abuse of a minor in the residence, revocation is required.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

IT IS RESPECTFULLY RECOMMENDED that the Commissioner affirm the disqualification of Licensee's husband and the revocation of Licensee's family child care license.

Dated: January 28, 2003

S/Steve M. Mihalchick  
STEVE M. MIHALCHICK  
Administrative Law Judge

## NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1, the Department of Human Services is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

Reported: Tape recorded. No transcript prepared.

## MEMORANDUM

Licensee's daughter did not testify. The transcript of her interview by the Investigator and Child Protection Worker and her letter statement to them were not subject to cross-examination. Nonetheless, it was fairly compelling evidence. All the other evidence regarding the sexual abuse gathered by the Child Protection Worker was hearsay, but much of it was very consistent with the abuse having occurred. The evidence presented by Licensee attacked the credibility and character of her daughter and praised the character of Licensee's husband. Much of that was from persons in good position to observe the situation, but none was from anybody in a position to know what really happened. Licensee's husband did not testify, but he denies any involvement—credibly in the eyes of many who know him. In view of all the evidence, it appears more likely than not that the abuse occurred as Licensee's daughter alleged. Her behavior before and after she revealed the abuse is consistent with the sexual abuse she described. The delinquent, deceitful, and promiscuous behavior reportedly exhibited by Licensee's oldest daughter is not necessarily an indicator of Licensee's daughter's truthfulness on this allegation; it may have been a result of the abuse she suffered. In any event, Licensee did not demonstrate by a preponderance of the evidence that the sexual abuse did not occur.

S.M.M.

---

<sup>[1]</sup> Testimony of Licensee.

<sup>[2]</sup> Licensee's ex-husband physically abused Licensee and had three assault charges and three DUIs from 1991 to 1997. Licensee obtained Order for Protection against her ex-husband on at least two occasions, one of which was in 1997, after she had remarried. Ex. 7.

<sup>[3]</sup> Ex. 7.

<sup>[4]</sup> The grandparents are Licensee's mother and stepfather.

<sup>[5]</sup> Exs. 2, 7.

<sup>[6]</sup> Exs. 3, 4.

<sup>[7]</sup> Exs. 4, 5.

<sup>[8]</sup> Exs. 2, 3.

<sup>[9]</sup> Ex. 2.

<sup>[10]</sup> Ex. 7.

<sup>[11]</sup> Ex. 7.

<sup>[12]</sup> Testimony of Rachal Erickson. This psychologist would have testified for the prosecution at Tony Reller's criminal trial. Licensee states that the psychologist also had information that would have aided in the defense of her husband.

[\[13\]](#) Exs. 8, 9.

[\[14\]](#) Ex. U.

[\[15\]](#) Ex. R.

[\[16\]](#) Ex. 11.

[\[17\]](#) Ex. 12.

[\[18\]](#) Ex. 6.

[\[19\]](#) Ex. LL. Such notification is required pursuant to Minn. R. 9543.0100, subp. 7A.

[\[20\]](#) Ex. 6.

[\[21\]](#) Ex. 1.

[\[22\]](#) Minn. Stat. § 626.556, subd. 2(a).

[\[23\]](#) Minn. Stat. § 626.556, subd. 2(b).

[\[24\]](#) Minn. R. 9502.0335.

[\[25\]](#) Minn. Stat. § 245A.04, subd. 3b(b).